

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 23 March 2005

SUBJECT: Contract, former City Water Department building

ATTACHMENT(S): Draft Contract

SUMMARY OF REQUEST:

Pursuant to the Board of Commissioner's direction at its 3 January 2005 meeting, Henderson County gave notice to the City of Hendersonville of its intent to exercise its option to purchase the former City of Hendersonville Water Department building, located on Fourth Avenue East, Hendersonville, adjacent to the Henderson County Courthouse parking lot.

Under the terms of the option agreement, both the County and the City were to obtain appraisals for the property, and the average of the two appraisal prices is to be the purchase price. The appraisal obtained by the County indicated a value for the real estate of \$782,100.00, and the appraisal obtained by the City indicated a value for the real estate of \$851,000.00. The average of the two figures is \$816,550.00. The proposed contract indicates that amount. (Both the County-obtained and City-obtained entire appraisals are available for inspection in the County Manager's Office, but are not included herewith in interest of space and paper conservation.)

COUNTY MANAGER RECOMMENDATION/BOARD ACTION REQUESTED:

The County manager supports this proposal. It is consistent with both the option contract on the property, and with this Board's direction at its meeting on 3 January 2005.

OFFER TO PURCHASE AND CONTRACT

Henderson County, as Buyer, hereby offers to purchase and City of Hendersonville, as Seller, upon acceptance of this offer, agrees to sell and convey, all of that plot, piece or parcel of land described below, together with all improvements located thereon and such fixtures and personal property as are listed below (collectively referred to as the "Property"), up on the following terms and conditions:

1. REAL PROPERTY: Located in the City of Hendersonville, the County of Henderson, and the State of North Carolina, being located at 318 Fourth Avenue West, Hendersonville, North Carolina, and being known as and more particularly described as:

Being all or part of real property described in three deeds, as follows:

All that real property described in that deed recorded in Deed Book 739 at page 79, Henderson County Registry; and all that real property south of Fourth Avenue East in Hendersonville, as is described in that deed recorded in Deed Book 715 at page 64, Henderson County Registry; and all that real property south of Fourth Avenue East, as is described in that deed recorded in Deed Book 757 at page 467, Henderson County Registry.

Approximate acreage of the aforesaid real property is undetermined, but will be further determined by survey before tender of a deed.

Subject to easements and any other burdens of record.

2. FIXTURES: The following items, if any, are included in the purchase price free of liens: any built-in appliances, light fixtures, ceiling fans, attached floor coverings, blinds, shades, drapery rods and curtain rods, brackets and all related hardware, window and door screens, storm windows, combination doors, awnings, antennas, satellite dishes and receivers, burglar/fire/smoke alarms, pool and spa equipment, solar energy systems, attached fireplace screens, gas logs, fireplace inserts, electric garage door openers with controls, outdoor plants and trees (other than in movable containers), basketball goals, storage sheds, mailboxes wall and/or door mirrors, and any other items attached or affixed to the Property. EXCEPT the following items: NONE.

3. PERSONAL PROPERTY: The following personal property is Included with the purchase price: N/A.

4. PURCHASE PRICE: The purchase price is **\$816,550.00**, and shall be paid as follows:

(a) \$0.00, EARNEST MONEY DEPOSIT with this offer by cash personal check bank check certified check other to be deposited and held in escrow by ("Escrow Agent"), until the sale is closed, at which time it will be credited to Buyer, or until this contract is otherwise terminated. In the event (1) this offer is not accepted; or (2) any of the conditions hereto are not satisfied, then all earnest monies shall be returned to Buyer. In the event of breach of this contract by Seller, upon Buyer's request, all earnest monies shall be returned to Buyer, but such return shall not affect any other remedies available to Buyer for such breach. In the event this offer is accepted and Buyer breaches this contract, then all earnest monies shall be forfeited upon Seller's request, but receipt of such forfeited earnest monies shall not affect any other remedies available to Seller for such breach.

NOTE: In the event of a dispute between Seller and Buyer over the return or forfeiture of earnest money held in escrow by a broker, the broker is required by state law to retain said earnest money in the broker's trust or escrow account until a written release from the parties consenting to its disposition has been obtained or until disbursement is ordered by a court of competent jurisdiction.

(b) \$0.00, ADDITIONAL EARNEST MONEY DEPOSIT to be paid to Escrow Agent no later than ____ / ____ / _____, TIME BEING OF THE ESSENCE WITH REGARD TO SAID DATE.

(c) \$0.00, BY ASSUMPTION of the unpaid principal balance and all obligations of Seller on the existing loan(s) secured by a deed of trust on the Property in accordance with the attached Loan Assumption Addendum.

(d) \$0.00, BY SELLER FINANCING in accordance with the attached Seller Financing Addendum.

(e) **\$816,550.00** in cash at Closing.

5. CONDITIONS: (State N/A in each blank that is not a condition to this contract). **Only condition is that sales price to be determined in accordance with the terms of an Option agreement previously executed between the parties.**

(f) Buyer must be able to obtain a FHA VA (attach FHA/VA Financing Addendum)

Conventional Other; loan at a Fixed Rate. Adjustable Rate in the principal amount of \$ _____ (plus any financed VA Funding Fee or FHA MIP) for a term of year(s) at an initial Interest rate not to exceed ___% per annum, with mortgage loan discount points not to exceed ___% of the loan amount. Buyer shall apply for said loan within __ days of the Effective Date of this contract. Buyer shall use Buyer's best efforts to secure the lender's customary loan commitment letter on or before ____ / ____ / _____ and to satisfy all terms and conditions of the loan commitment letter by Closing. After the above letter date, Seller may request in writing from Buyer a copy of the loan commitment letter. If Buyer fails to provide Seller a copy of the loan commitment letter or a written

waiver of this loan condition within five days of receipt of Seller's request, Seller may terminate this contract by written notice to Buyer at any time thereafter, provided Seller has not then received a copy of the letter or the waiver. Buyer shall be responsible for all costs with respect to any loan obtained by Buyer, except if Seller is to pay any of the Buyer's Closing costs (including loan discount points), those costs are as follows:

(b) There must be no restricts, easement, zoning or other governmental regulation that would prevent the reasonable use of the Property for _____ purposes.

(c) The Property must be in substantially the same or better condition at Closing as on the date of this offer, reasonable wear and tear excepted.

(d) All deeds of trust, liens and other charges against the Property, not assumed by Buyer, must be paid and satisfied by Seller prior to or at Closing such that cancellation may be promptly obtained following Closing. Seller shall remain obligated to obtain any such cancellations following Closing.

(e) Title must be delivered at Closing by General Warranty Deed unless otherwise stated herein, and must be fee simple marketable title, free of all encumbrances except: ad valorem taxes for the current year (prorated through the date of Closing); utility easements and unviolated restrictive covenants that do not materially affect the value of the Property; and such other encumbrances as may be assumed or specifically approved by Buyer. The Property must have legal access to a public right of way.

6. SPECIAL ASSESSMENTS: Seller warrants that there are no pending or confirmed governmental special assessments for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments, except as follows: None.

(Insert "None" or the identification of such assessments, if any.) Seller shall pay all owners' association assessments and all governmental assess-ments confirmed through the time of Closing, if any, and Buyer shall take title subject to all pending assessments, if any, unless otherwise agreed as follows:

7. PRORATIONS AND ADJUSTMENTS: Unless otherwise provided, the following items shall be prorated and either adjusted between the parties or paid at Closing: (a) Ad valorem taxes on real property shall be prorated on a calendar year basis through the date of Closing; (b) Ad valorem taxes on personal property for the entire year shall be paid by the Seller unless the personal property is conveyed to the Buyer, in which case, the personal property taxes shall be prorated on a calendar year basis through the date of Closing. (c) All late listing penalties, if any, shall be paid by Seller. (d) Rents, if any, for the Property shall be prorated through the date of Closing. (e) Owners' association dues and other like charges shall be prorated through the date of Closing. Seller represents that the regular owners' association dues, if any, are \$ 0 _____ per _____.

8. CLOSING EXPENSES: Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this agreement, and for excise tax (revenue stamps) required by law. Buyer shall pay for recording the deed and for preparation and recording of all instruments required to secure the balance of the purchase price unpaid at Closing.

9. FUEL: Buyer agrees to purchase from Seller the fuel, if any, situated in any tank on the Property at the prevailing rate with the cost of measurement thereof, if any, being paid by Seller.

10. EVIDENCE OF TITLE: Seller agrees to use his best efforts to deliver to Buyer as soon as reasonably possible after the Effective Date of this contract, copies of all title information in possession of or available to Seller, including but not limited to: title insurance policies, attorney's opinions on title, surveys, covenants, deeds, notes and deeds of trust and easements relating to the Property.

11. LABOR AND MATERIAL: Seller shall furnish at Closing an affidavit and indemnification agreement in form satisfactory to Buyer showing indemnify Buyer against all lost from any cause or claim arising therefrom.

12. PROPERTY DISCLOSURE AND INSPECTIONS:

(a) Property Disclosure:

Buyer has received a signed copy of the N.C. Residential Property Disclosure Statement prior to the signing of this Offer to Purchase and Contract.

Buyer has NOT received a signed copy of the N.C. Residential Property Disclosure Statement prior to the signing of this Offer to Purchase and Contract and shall have the right to terminate or withdraw this contract without penalty prior to WHICHEVER OF THE FOLLOWING EVENTS OCCUR FIRST: (1) the end of the third calendar day following receipt of the Disclosure Statement; (2) the end of the third calendar day following the date the contract was made; or (3) Closing or occupancy by the Buyer in the case of a sale or exchange.

Exempt from N.C. Residential Property Disclosure Statement because (SEE GUIDELINES)

The Property is residential and was built prior to 1978 (Attach Lead-Based Paint or Lead-Based Paint Hazards Disclosure Addendum).

(b) Property Inspection: Unless otherwise stated herein, or as otherwise provided on an inspection addendum attached hereto, Buyer shall have the option of inspecting or, obtaining at Buyer's expense, inspections to determine the condition of the Property. Unless otherwise stated herein, it is a condition of this contract that: (i) the built-in appliances, electrical system, plumbing system, heating and cooling systems, roof coverings (including flashing and gutters), doors and windows, exterior surfaces, structural components (including foundations, columns, chimneys, floors, walls, ceilings and roofs), porches and decks, fireplaces and flues, crawl space and attic ventilation systems (if any), water and sewer systems (public and private), shall be performing the function for which intended and shall not be in need of immediate repair; (ii) there shall be no unusual drainage conditions or evidence of excessive moisture adversely affecting the structure(s); and (iii) there shall be no friable asbestos or existing environmental contamination. Any inspections shall be completed and written notice of necessary repairs shall be given to Seller on or before _____ Seller shall provide written notice to Buyer of Seller's response within _____ days of Buyer's notice. Buyer is advised to have any inspections made prior to incurring expenses for Closing and in sufficient time to permit any required repairs to be completed by Closing.

(c) Wood-Destroying Insects: Unless otherwise stated herein, Buyer shall have the option of obtaining, at Buyer's expense, a report from a licensed pest control operator on a standard from in accordance with the regulations of the North Carolina Structural Pest Control Committee, stating that as to all structures except _____ there was no visible evidence of wood-destroying insects and containing no indication of visible damage therefrom. The report must be obtained in sufficient time so as to permit treatment, if any, and repairs, if any, to be completed prior to Closing. All treatment required shall be paid for by Seller and completed prior to Closing, unless otherwise agreed upon in writing by the parties. The Buyer is advised that the inspection report described in this paragraph may not always reveal either structural damage or damage caused by agents or organisms other than wood-destroying insects. If new construction, Seller shall provide a standard warranty of termite soil treatment.

(d) Repairs: Pursuant to any inspections in (b) and/or (c) above, if any repairs are necessary, Seller shall have the option of completing them or refusing to complete them. If Seller elects not to complete the repairs, then Buyer shall have the option of accepting the Property in its present condition or terminating this contract, in which case all earnest monies shall be refunded. Unless otherwise stated herein, or as otherwise provided on an inspection addendum attached hereto, any items not covered by (b) (i), b (ii), b (iii) and (c) above are excluded from repair negotiations under this contract.

(e) Acceptance: CLOSING SHALL CONSTITUTE ACCEPTANCE OF EACH OF THE SYSTEMS, ITEMS AND CONDITIONS LISTED ABOVE IN ITS THEN EXISTING CONDITION UNLESS PROVISION IS OTHERWISE MADE IN WRITING.

13. REASONABLE ACCESS: Seller will provide reasonable access to the Property (including working, existing utilities) through the earlier of Closing or possession by Buyer, to Buyer or Buyer's representatives for the purposes of appraisal, inspection, and/or evaluation. Buyer may conduct a walk-through inspection of the Property prior to Closing.

14. CLOSING: Closing shall be defined as the date and time of recording of the deed. All parties agree to execute any and all documents and papers necessary in connection with Closing and transfer of title on or before thirty days from the date hereof, at a place designated by Buyer. The deed is to be made to .

15. POSSESSION: Unless otherwise provided herein, possession shall be delivered at Closing. In the event possession is NOT to be delivered at Closing: [a Buyer Possession Before Closing Agreement is attached. OR, [a Seller Possession After Closing Agreement is attached.

16. OTHER PROVISIONS AND CONDITIONS: (ITEMIZE ALL ADDENDA TO THIS CONTRACT AND ATTACH HERETO).

This contract is pursuant to the option agreement between the Buyer and Seller.

17. RISK OF LOSS: The risk of loss or damage by fire or other casualty prior to Closing shall be upon Seller. If the improvements on the Property are destroyed or materially damaged prior to Closing, Buyer may terminate this contract by written notice delivered to Seller or Seller's agent and all deposits shall be returned to Buyer. In the event Buyer does NOT elect to terminate this contract, Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property being purchased.

18. ASSIGNMENTS: This contract may not be assigned without the written consent of all parties, but if assigned by agreements, then this contract shall be binding on the assignee and his heirs and successors.

19. PARTIES: This contract shall be binding upon and shall inure to the benefit of the parties i.e., Buyer and Seller and their heirs, successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

20. SURVIVAL: If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the Closing, it shall survive the Closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

21. ENTIRE AGREEMENT: This contract contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed herein. All changes, additions or deletions hereto must be in writing and signed by all parties. Nothing contained herein shall alter any agreement between a REALTOR or broker and Seller or Buyer as contained in any listing agreement, buyer agency agreement, or any other agency agreement between them.

22. NOTICE AND EXECUTION: Any notice or communication to be given to a party herein may be given to the party or to such party's agent. This offer shall become a binding contract (the "Effective Date") when signed by both Buyer and Seller and such signing is communicated to the offering party. This contract is executed under seal in signed multiple originals, all of which together constitute one and the same instrument, with a signed original being retained by each party, and the parties adopt the word "SEAL" beside their signatures below.

Buyer acknowledges having made an on-site personal examination of the Property prior to the making of this offer.

Date: _____

Date: _____

Buyer _____ (SEAL)

Seller _____ (SEAL)

Date: _____

Date: _____

Buyer _____ (SEAL)

Seller _____ (SEAL)
